

116TH CONGRESS  
1ST SESSION

# S. 232

To amend the Ethics in Government Act of 1978 to require individuals nominated or appointed to Senate-confirmed positions or to positions of a confidential or policymaking character to disclose certain types of contributions made or solicited by, or at the request of, the individuals.

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## IN THE SENATE OF THE UNITED STATES

JANUARY 28, 2019

Mr. WHITEHOUSE (for himself, Mr. CARPER, Mr. UDALL, and Mr. VAN HOLLEN) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

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# A BILL

To amend the Ethics in Government Act of 1978 to require individuals nominated or appointed to Senate-confirmed positions or to positions of a confidential or policymaking character to disclose certain types of contributions made or solicited by, or at the request of, the individuals.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

**3 SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Conflicts from Political  
5       Fundraising Act of 2019”.

**6 SEC. 2. FINDINGS.**

7       Congress finds the following:

1                   (1) Public confidence in the Federal Govern-  
2         ment is based on the expectation that officers and  
3         employees will discharge their duties impartially, and  
4         avoid either actual conflicts of interest or the ap-  
5         pearance thereof.

6                   (2) The risk of an actual conflict of interest, or  
7         the appearance thereof, arises when a nominee or  
8         appointee to a Senate-confirmed position or an indi-  
9         vidual in a position of a confidential or policymaking  
10      character has previously donated to, solicited for, or  
11      received funds from a political action committee or  
12      entity organized under section 501(c)(4) or section  
13      501(c)(6) of the Internal Revenue Code of 1986.

14                  (3) Since the 2010 decision by the Supreme  
15      Court of the United States in *Citizens United v.*  
16      Federal Election Commission, spending by corpora-  
17      tions subject to Federal laws and regulations has in-  
18      creased dramatically.

19                  (4) While some corporate political spending is  
20      done publicly, contributions to entities organized  
21      under section 501(c)(4) of the Internal Revenue  
22      Code of 1986 need not be disclosed, making this  
23      spending effectively anonymous. The risk of an ac-  
24      tual conflict of interest, or the appearance thereof,

1       arises whether political spending is public or anonymous.  
2

3                 (5) Current financial disclosure requirements do  
4       not require filers to report funds they have donated  
5       to, solicited for, or received from political action  
6       committees or entities organized under section  
7       501(c)(4) or section 501(c)(6) of the Internal Rev-  
8       enue Code of 1986.

9                 (6) Apparent or actual conflicts of interest are  
10      best ameliorated through public disclosure of this ac-  
11      tivity to the Office of Government Ethics so the ap-  
12      parent or actual conflicts can be addressed in ethics  
13      agreements negotiated between the filer and the  
14      agency in which the filer will serve.

15     **SEC. 3. DISCLOSURE OF CERTAIN TYPES OF CONTRIBU-**  
16                 **TIONS.**

17         (a) **DEFINITIONS.**—Section 109 of the Ethics in Gov-  
18      ernment Act of 1978 (5 U.S.C. App.) is amended—

19                 (1) by redesignating paragraphs (2) through  
20       (19) as paragraphs (5) through (22), respectively;  
21       and

22                 (2) by inserting after paragraph (1) the fol-  
23       lowing:

1           “(2) ‘covered contribution’ means a payment,  
2        advance, forbearance, rendering, or deposit of  
3        money, or any thing of value—

4           “(A)(i) that—

5           “(I) is—

6           “(aa) made by or at the request  
7        of a covered individual; or

8           “(bb) solicited in writing by or at  
9        the request of a covered individual;  
10      and

11      “(II) is made—

12      “(aa) to a political organization,  
13      as defined in section 527 of the Inter-  
14      nal Revenue Code of 1986; or

15      “(bb) to an organization—

16      “(AA) that is described in  
17      paragraph (4) or (6) of section  
18      501(c) of the Internal Revenue  
19      Code of 1986 and exempt from  
20      tax under section 501(a) of such  
21      Code; and

22      “(BB) that promotes or op-  
23      poses changes in Federal laws or  
24      regulations that are (or would  
25      be) administered by the agency in

which the covered individual has  
been nominated for appointment  
to a covered position or is serving  
in a covered position; or

8 "II) made—

9                             “(aa) by an individual or entity  
10                             the activities of which are subject to  
11                             Federal laws or regulations that are  
12                             (or would be) administered by the  
13                             agency in which the covered individual  
14                             has been nominated for appointment  
15                             to a covered position or is serving in  
16                             a covered position; and

17                             “(bb) to—

18                                 “(AA) a political organiza-  
19                                 tion, as defined in section 527 of  
20                                 the Internal Revenue Code of  
21                                 1986; or

3                 “(B) that is made to an organization de-  
4                 scribed in item (aa) or (bb) of clause (i)(II) or  
5                 clause (ii)(II)(bb) of subparagraph (A) for  
6                 which the total amount of such payments, ad-  
7                 vances, forbearances, renderings, or deposits of  
8                 money, or any thing of value, during the cal-  
9                 endar year in which it is made is not less than  
10                 the contribution limitation in effect under sec-  
11                 tion 315(a)(1)(A) of the Federal Election Cam-  
12                 paign Act of 1971 (52 U.S.C. 30116(a)(1)(A))  
13                 for elections occurring during such calendar  
14                 year;

15               “(3) ‘covered individual’ means an individual  
16               who has been nominated or appointed to a covered  
17               position; and

## 18 “(4) ‘covered position’—

19 “(A) means—

“(i) a position described under sections 5312 through 5316 of title 5, United States Code;

1                     “(iii) a position as a limited term ap-  
2                     pointee, limited emergency appointee, or  
3                     noncareer appointee in the Senior Execu-  
4                     tive Service, as defined under paragraphs  
5                     (5), (6), and (7), respectively, of section  
6                     3132(a) of title 5, United States Code; or

7                     “(iv) a position in the executive  
8                     branch of the Government of a confidential  
9                     or policy-determining character under  
10                    schedule C of subpart C of part 213 of  
11                    title 5 of the Code of Federal Regulations;  
12                    and

13                    “(B) does not include a position if the in-  
14                    dividual serving in the position has been ex-  
15                    cluded from the application of section  
16                    101(f)(5);”.

17                 (b) DISCLOSURE REQUIREMENTS.—The Ethics in  
18                 Government Act of 1978 (5 U.S.C. App.) is amended—

19                 (1) in section 101—

20                 (A) in subsection (a)—

21                 (i) by inserting “(1)” before “With-  
22                 in”;

23                 (ii) by striking “unless” and inserting  
24                 “and, if the individual is assuming a cov-  
25                 ered position, the information described in

1                   section 102(j), except that, subject to para-  
2                   graph (2), the individual shall not be re-  
3                   quired to file a report if”; and

4                   (iii) by adding at the end the fol-  
5                   lowing:

6                 “(2) If an individual has left a position described in  
7                 subsection (f) that is not a covered position and, within  
8                 30 days, assumes a position that is a covered position, the  
9                 individual shall, within 30 days of assuming the covered  
10          position, file a report containing the information described  
11          in section 102(j)(2)(A).”;

12                 (B) in subsection (b)(1), in the first sen-  
13                 tence, by inserting “and the information re-  
14                 quired by section 102(j)” after “described in  
15                 section 102(b)”;

16                 (C) in subsection (d), by inserting “and, if  
17                 the individual is serving in a covered position,  
18                 the information required by section  
19                 102(j)(2)(A)” after “described in section  
20                 102(a)”; and

21                 (D) in subsection (e), by inserting “and, if  
22                 the individual was serving in a covered position,  
23                 the information required by section  
24                 102(j)(2)(A)” after “described in section  
25                 102(a)”; and

1                             (2) in section 102—

2                                 (A) in subsection (g), by striking “Political  
3                                 campaign funds” and inserting “Except as pro-  
4                                 vided in subsection (j), political campaign  
5                                 funds”; and

6                                 (B) by adding at the end the following:

7                             “(j)(1) In this subsection—

8                                 “(A) the term ‘applicable period’ means—

9                                 “(i) with respect to a report filed pursuant  
10                                 to subsection (a) or (b) of section 101, the year  
11                                 of filing and the 4 calendar years preceding the  
12                                 year of the filing; and

13                                 “(ii) with respect to a report filed pursuant  
14                                 to subsection (d) or (e) of section 101, the pre-  
15                                 ceding calendar year; and

16                             “(B) the term ‘covered gift’ means a gift that—

17                                 “(i) is made to a covered individual, the  
18                                 spouse of a covered individual, or the dependent  
19                                 child of a covered individual;

20                                 “(ii) is made by an entity described in item  
21                                 (aa) or (bb) of section 109(2)(A)(i)(II); and

22                                 “(iii) would have been required to be re-  
23                                 ported under subsection (a)(2) if the covered in-  
24                                 dividual had been required to file a report

1           under section 101(d) with respect to the cal-  
2           endar year during which the gift was made.

3           “(2)(A) A report filed pursuant to subsection (a), (b),  
4 (d), or (e) of section 101 by a covered individual shall in-  
5 clude, for each covered contribution made by or at the re-  
6 quest of, or that was solicited in writing by or at the re-  
7 quest of, that covered individual during the applicable pe-  
8 riod—

9           “(i) the date on which the covered contribution  
10          was made;

11          “(ii) if applicable, the date or dates on which  
12          the covered contribution was solicited;

13          “(iii) the value of the covered contribution;

14          “(iv) the name of the person making the cov-  
15          ered contribution; and

16          “(v) the name of the person receiving the cov-  
17          ered contribution.

18          “(B)(i) Subject to clause (ii), a covered contribution  
19          made by or at the request of, or that was solicited in writ-  
20          ing by or at the request of, a covered individual shall con-  
21          stitute a conflict of interest, or an appearance thereof,  
22          with respect to the official duties of the covered individual.

23          “(ii) The Director of the Office of Government Ethics  
24          may exempt a covered contribution from the application  
25          of clause (i) if the Director determines the circumstances

1 of the solicitation and making of the covered contribution  
2 do not present a risk of a conflict of interest and the ex-  
3 emption of the covered contribution would not affect ad-  
4 versely the integrity of the Government or the public's con-  
5 fidence in the integrity of the Government.

6 "(3) A report filed pursuant to subsection (a) or (b)  
7 of section 101 by a covered individual shall include the  
8 information described in subsection (a)(2) with respect to  
9 each covered gift received during the applicable period.".

10 (c) PROVISION OF REPORTS AND ETHICS AGREE-  
11 MENTS TO CONGRESS.—Section 105 of the Ethics in Gov-  
12 ernment Act of 1978 (5 U.S.C. App.) is amended by add-  
13 ing at the end the following:

14 "(e) Not later than 30 days after receiving a written  
15 request from the Chairman or Ranking Member of a com-  
16 mittee or subcommittee of either House of Congress, the  
17 Director of the Office of Government Ethics shall provide  
18 to the Chairman and Ranking Member each report filed  
19 under this title by a covered individual and any ethics  
20 agreement entered into between the agency and the cov-  
21 ered individual.".

22 (d) RULES ON ETHICS AGREEMENTS.—The Director  
23 of the Office of Government Ethics shall promptly issue  
24 rules regarding how an agency in the executive branch  
25 shall address information required to be disclosed under

1 the amendments made by this Act in drafting ethics agree-  
2 ments between the agency and individuals appointed to po-  
3 sitions in the agency.

4 (e) TECHNICAL AND CONFORMING AMENDMENTS.—

5 (1) The Ethics in Government Act of 1978 (5  
6 U.S.C. App.) is amended—

7 (A) in section 101(f)—

8 (i) in paragraph (9), by striking “sec-  
9 tion 109(12)” and inserting “section  
10 109(15);

11 (ii) in paragraph (10), by striking  
12 “section 109(13)” and inserting “section  
13 109(16);

14 (iii) in paragraph (11), by striking  
15 “section 109(10)” and inserting “section  
16 109(13); and

17 (iv) in paragraph (12), by striking  
18 “section 109(8)” and inserting “section  
19 109(11);

20 (B) in section 103(l)—

21 (i) in paragraph (9), by striking “sec-  
22 tion 109(12)” and inserting “section  
23 109(15); and

(ii) in paragraph (10), by striking “section 109(13)” and inserting “section 109(16); and

(C) in section 105(b)(3)(A), by striking “section 109(8) or 109(10)” and inserting “section 109(11) or 109(13)”.

18 (B) in subsection (h)(2)—

